

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JONATHAN K. BORIA,	:	Case No. 09-CV-2620
Plaintiff,	:	
	:	JUDGE KATHLEEN M. O'MALLEY
v.	:	
PAUL SCHISMENOS, et al.	:	<u>ORDER</u>
Defendants.	:	

Pursuant to 28 U.S.C. § 636(b) and Local Rule 72.2, this matter was referred to Magistrate Judge James S. Gallas (“Judge Gallas”) for full pretrial supervision. (Doc. 5.) On February 10, 2010, Judge Gallas conducted a case management conference (“CMC”) during which: (1) the Plaintiff, Jonathan K. Boria (“Plaintiff”), agreed to dismiss Defendants Daniel Kohler, Thomas Packard, Richard Indoe, Joseph Remington, and Harrisville Township with prejudice; and (2) the remaining parties reached a settlement agreement which was put on the record stenographically.

After the CMC, Judge Gallas prepared and submitted a Report and Recommendation (“R&R”) in which he recommended that “the above-named defendants be dismissed from the action with prejudice and the case with regard to the remaining parties be dismissed with prejudice in accordance with the terms of the settlement entered on February 10, 2010.” (Doc. 15.) At the conclusion of the R&R, Judge Gallas specifically advised the parties of their right to object to the R&R, and of the consequences of failing to do so in a timely fashion. (*Id.*) To date, none of the parties have filed any objections to the R&R, and the time period for doing so expired on February 24, 2010.

It is well-established that “[f]ailure to object to an adverse magistrate’s report and recommendation, after being advised of the consequences, constitutes a waiver of further appellate

review.” *See Smith v. Franklin*, 872 F.2d 1028 (6th Cir. 1989) (unpublished) (citing *Thomas v. Arn*, 474 U.S. 140 (1985)); *see also Javaherpour v. United States*, 315 Fed. Appx. 505, 508 (6th Cir. 2009) (“[A] party must file timely objections with the district court to avoid waiving appellate review.” (citing *States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981))). Indeed:

In *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 471, 88 L. Ed. 2d 435 (1985), the United States Supreme Court specifically upheld [the Sixth Circuit’s] rule conditioning the right to appeal a district court’s order on the filing of specific objections to the magistrate’s report and recommendation. The Court noted that “the Sixth Circuit rule, by precluding appellate review of any issue not contained in objections, prevents a litigant from ‘sandbagging’ the district judge by failing to object and then appealing.” *Id.*

Wilson v. McMacken, 786 F.2d 216, 220 (6th Cir. 1986).

Because none of the parties have objected to Judge Gallas’s R&R, it is unnecessary to review this matter further. Accordingly, the Court ADOPTS Judge Gallas’s R&R. Plaintiff’s case, therefore, is **DISMISSED WITH PREJUDICE**, pursuant to the terms of the settlement agreement as stated on the record during the CMC on February 10, 2010.

It is **ORDERED** that this case is hereby closed. The Court, however, retains jurisdiction to: (1) vacate this Order and reopen the action upon cause shown that settlement has not been completed and further litigation is necessary; or (2) alter the terms of settlement and dismissal upon agreement of the parties.

IT IS SO ORDERED.

s/Kathleen M. O’Malley
KATHLEEN McDONALD O’MALLEY
UNITED STATES DISTRICT JUDGE

Dated: March 3, 2010